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Comprehensive review of the pension schemes for the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the comprehensive review of the pension schemes for the members of the International Court of Justice and judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/66/617). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. The Secretary-General's report was submitted in response to General Assembly resolution 65/258, in which the Assembly took note that the review of the pension benefits of the members of the Court and the judges of the Tribunals would take place at its sixty-sixth session, including options for defined benefit and defined contribution pension schemes; decided to review at that session the pension schemes for the individuals concerned; and requested the Secretary-General to include in his report a proposal for a mechanism that could be used to determine retirement pension benefits, taking into account acquired pension benefit rights accrued prior to serving in the Court or the Tribunals.

II. Background

3. In paragraphs 3 to 18 of his report, the Secretary-General provides information on the background to and evolution of the pension benefits payable to the members of the International Court of Justice and the judges of the two Tribunals. The

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Advisory Committee notes, in particular, that the members of the Court are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, and that the pension benefit for the judges of the two Tribunals is based on that applicable to the members of the Court, prorated to account for the difference in length in the terms of appointment (A/53/7/Add.6, para. 29). The Committee further notes from paragraph 15 of the Secretary-General's report that the General Assembly is the sole authority to determine the conditions of service and the pension benefits of the members of the Court and the judges of the Tribunals.

III. Current retirement benefits provided to the members of the Court and the judges of the Tribunals

4. The current retirement benefits provided to the members of the International Court of Justice and the judges of the two Tribunals (excluding the ad litem judges, who are not entitled to retirement benefits) are summarized in table 1 of the Secretary-General's report. In brief, under the existing defined-benefit scheme the individuals concerned are entitled to a retirement benefit equivalent to 50 per cent of their annual net base salary (excluding post adjustment), prorated for less than nine years' service, plus 0.154 per cent times their net base salary for each additional month of service in excess of 108 months. Taking as the basis the judges' current net base salary of $170,080, the minimum benefit payable after nine years of service is $85,040. A reduction of 0.5 per cent per month is applied in the case of early retirement (before the age of 60 years), and post-retirement cost-of-living adjustments are applied at the same time as the base salary is revised and at the same percentage. The pension scheme is non-contributory and includes a surviving spouse benefit, a dependent child benefit and a disability benefit. As indicated in paragraph 53 of the Secretary-General's report, the current scheme consists of a two-tiered system of accumulation, with a 5.56 per cent annual accrual rate in the first nine years of service, followed by a 1.85 per cent annual accrual rate thereafter, not exceeding a maximum benefit percentage of 66.67 per cent of final salary. The Advisory Committee notes from the report that, in general, the members of the Court and the judges of the Tribunals assume office at an average age of 58 years and remain in service for between 9 and 10 years. Most are married and some still have dependent children (A/66/617, paras. 29 and 37).

5. Table 3 of the Secretary-General's report contains a comparison between the current pension benefits of the members of the Court and judges of the Tribunals and those of judges serving in various supreme and international courts. The Advisory Committee notes that the most comparable courts are those of a multinational character, namely the European Court of Justice, the European Court of Human Rights and the International Criminal Court. Based on the applicable replacement ratios, and assuming that (a) the net base salary of the judges of those courts at retirement is identical to that of the members of the International Court of Justice and the judges of the Tribunals (i.e. $170,080); (b) they have served a nine-year term of office; and (c) they have attained the applicable retirement age, they would receive annual pensions amounting to $65,408, $30,600 and $21,250, respectively. The Committee notes, in this regard, that the figures provided by the Secretary-General are illustrative: actual benefit amounts will differ according to the salaries paid by the relevant courts.

6. As indicated in paragraph 28 of the Secretary-General's report, pension benefits for the members of the Court and the judges of the Tribunals are not pre-funded. Retirees and beneficiaries are paid from the assessed biennial budget of each organ on a pay-as-you-go basis. The current liability for the projected benefits by organ, including current retirees and beneficiaries (a total of 61 individuals), is set out in table 2 of the Secretary-General's report and reproduced as table 1 below:

Table 1
Current liability for projected benefits
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	17 043 698	13 196 783	10 279 979
Prospective judges[a]	29 835 105	—	—
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**65 312 200**	**23 005 765**	**18 268 430**

[a] Includes new judges projected to be appointed over the next 30 years.

IV. Comprehensive review

Methodology

7. With regard to the conduct of the comprehensive review, the Advisory Committee notes from paragraphs 22 to 24 of the Secretary-General's report that, in accordance with the request of the General Assembly contained in paragraphs 4 and 5 of its resolution 65/258, the Secretary-General has taken advantage of the expertise available within the United Nations in conducting the comprehensive review of the pension schemes. A working group, comprising representatives of the United Nations Joint Staff Pension Fund, the Office of Human Resources Management, the Court and the Tribunals, was established in order to conduct a thorough study of retirement plan alternatives. The Office of Programme Planning, Budget and Accounts was also consulted for its financial expertise. In the absence of internal staff resources to conduct the required actuarial study, the actuaries of the Pension Fund, Buck Consultants, Inc., were engaged for that purpose. Upon enquiry, the Committee was informed that the actuarial fees had amounted to $60,000. Information on the methodology used to conduct the comprehensive review is contained in paragraphs 32 and 33 of the Secretary-General's report.

Findings: pension benefit design options

8. In his report, the Secretary-General presents four retirement benefit design options. The characteristics of each option are summarized in paragraphs 9 to 12 below.

9. The first option described by the Secretary-General — option A — is a defined-benefit scheme, which would provide a specified periodic benefit on retirement, guaranteed for the life of the participant, predetermined by a formula based on the employee's earnings history, length of service and age, rather than

depending on investment returns. The most common type of formula — referred to as the "replacement ratio" — is based on the employee's terminal earnings. As indicated in paragraph 5 above, table 3 of the Secretary-General's report compares replacement ratios for judges of various supreme and international courts who retire after nine years' service. The Secretary-General notes, in particular, that the benefit for members of the Court and judges of the Tribunals is above average, at 50 per cent of final salary. Table 4 of the report compares the current pension accrual rate for the members of the Court and the judges of the Tribunals — 5.56 per cent for the first nine years, then 1.85 per cent thereafter — with the rates applicable to judges of various supreme and international courts (A/66/617, paras. 34-41).

10. The second option discussed by the Secretary-General — option B — is a defined-contribution scheme, which would provide an account balance, with interest accruing both before and after retirement, based on the actual earnings of underlying investments. The amount of benefit expected to be provided by this specific scheme is directly related not only to the amount of contribution made, but also to the length of time the money is invested. The effects of compound interest will have a significant growth effect only over a long period of time. Table 5 of the Secretary-General's report shows some sample fixed contribution rates and annual equivalent accrual rates that can be expected based on a defined-contribution scheme and various assumed investment returns (ibid., paras. 42-48).

11. The Secretary-General's third option — option C — consists of a lump-sum payment made from payroll to a retiring judge in lieu of any pension benefits. In order to determine the appropriate lump-sum amount, either a cash balance design or a pension equity design could be applied (ibid., paras. 49-52).

12. Lastly, the Secretary-General's fourth option — option D — is the maintenance of the status quo, i.e. retaining the current pension benefit scheme as described in paragraph 4 above (ibid., paras. 53-55).

13. In his report, the Secretary-General alludes to the possible disadvantages of some of the retirement benefit design options. He points out that, unlike the current pension scheme which is not pre-funded, option B, the defined-contribution scheme, requires advance funding. He also states that additional administrative provisions would be required to manage a defined-contribution scheme. With regard to option C, the lump-sum payment, it is indicated in paragraph 52 of the report that its adoption would amount to the abolition of the current pension in return for a payment. This approach would, according to the Secretary-General, seem difficult to reconcile with Article 32, paragraph 7, of the Statute of the Court, and, by extension, articles 13 bis and 12 bis of the statutes of the two Tribunals, which confer on members of the Court and judges of the Tribunals a right to a pension. The Advisory Committee also takes note of the views expressed in paragraphs 54 and 59 of the Secretary-General's report.

14. Following its consideration of the Secretary-General's report, the Advisory Committee was provided, for information, with an advance copy of a paper by the International Court of Justice containing detailed comments and observations of the members of the Court on the issues raised by the Secretary-General. The Committee was informed that it was the intention of the Court to have the paper circulated to the President and members of the General Assembly.

Secretary-General's recommendation

15. Section VI of the Secretary-General's report contains his recommendation concerning the pension scheme for the members of the Court and the judges of the Tribunals. In his view, based on the actuarial findings and bearing in mind the relative disadvantages of some of the other options (see para. 13 above, as well as A/66/617, para. 57), the defined-benefit scheme — option A — may be an appropriate way forward. The Secretary-General indicates in paragraph 58 of his report that the most favoured application of this option would be to change the current two-tiered system of accumulation (see para. 4 above) to a linear system of accumulation of 3.7 per cent per year for 18 years and nothing thereafter. This would reduce the front load, since members of the Court and judges of the Tribunals would receive a lower pension amount for the first nine years of their service, and reduce the overall liability of Member States. According to the Secretary-General, it might also encourage longer periods of service, thereby reducing the benefit payout term, assuming that the average age of recruitment remains 58 years. Upon enquiry, the Advisory Committee was informed that, should the General Assembly endorse the Secretary-General's recommendation, new members of the Court who retired after having attained the retirement age of 60 years and after having served one nine-year term would receive a pension of $56,637 per year, assuming that their net base salary on retirement would be $170,080.

16. The Advisory Committee notes from paragraph 60 of the Secretary-General's report that it is suggested that any new pension scheme should apply only to newly elected members of the Court, given that Article 32, paragraph 5, of the Statute provides that the salaries, allowances and compensation of the members of the Court shall be fixed by the General Assembly and may not be decreased during their term of office. The Committee notes that, while this provision applies equally to the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda by virtue of articles 13 bis and 12 bis, respectively, of their statutes, with the impending completion of the Tribunals' mandates it is highly unlikely that any new permanent judges will be elected and become eligible for pension benefits by serving for more than three years (A/66/617, para. 18).

17. In paragraph 18 of his report, however, the Secretary-General raises the issue of the applicability of the pension scheme to the judges of the International Residual Mechanism for Criminal Tribunals. He indicates, in particular, that the Presidency of the Residual Mechanism is likely to be "double hatted" with the Presidency of one of the two Tribunals and that, accordingly, if the current pension scheme is revised two different sets of regulations could apply to the same judge in his or her capacity as President of the Residual Mechanism and President of one of the Tribunals. For that and other reasons enumerated in paragraph 18 of his report, the Secretary-General states that it may be more efficient to exclude the Residual Mechanism and the Tribunals in their entirety from the revised pension scheme. In this connection, the Advisory Committee recalls that, in accordance with article 8, paragraph 4, of the statute of the Residual Mechanism, the terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice. Upon enquiry, the Committee was informed that if the new President of the Residual Mechanism were to be elected from among the existing permanent judges of the Tribunals and were to be permitted to maintain his or her existing contractual relationship with the United Nations, his or her original conditions of service would continue to apply. This would mean that, pursuant to

Article 32, paragraph 5, of the Statute of the Court, any changes to the pension scheme that would lead to a decrease in pension benefits would not apply.

18. Should the General Assembly endorse the recommendation described in paragraph 15 above, the estimated liability for new judges projected to assume office over the next 30 years would be reduced by $9,964,925, from $29,835,105 to $19,870,180. In addition, changing to a linear system of accumulation would reduce the actuarial cost of funding the pension entitlement over a 10-year period from its current level of about 66 per cent of the judges' base pay to about 44 per cent (A/66/617, para. 58). Upon enquiry, the Advisory Committee was informed that, in dollar terms, the actuarial cost per participant would be reduced from $112,253 to $74,834, resulting in savings of $37,419 per year per participant. The Committee was provided, upon request, with the following table illustrating the liability for the projected benefits by organ, including current retirees and beneficiaries, assuming that the linear approach recommended by the Secretary-General is applied as he suggests, i.e. only to new judges:

Table 2
Liability for projected benefits assuming that option A is applied only to new judges
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	17 043 698	13 196 783	10 279 979
Prospective judges[a]	19 870 180		
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**55 347 275**	**23 005 765**	**18 268 430**
Reduction in liability as compared with current scheme	**9 964 925**	—	—

[a] Includes new judges projected to be appointed over the next 30 years.

Alternative scenarios and additional comparators

19. Upon request, the Advisory Committee was also provided with the following table illustrating the liability for the projected benefits by organ, including current retirees and beneficiaries, if the linear approach recommended by the Secretary-General were to be applied both to new judges and to current active judges:

Table 3
Liability for projected benefits assuming that option A is applied to both new judges and current judges
(As at 31 December 2010)

	International Court of Justice	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Active judges	14 977 701	12 505 128	9 760 275
Prospective judges[a]	19 870 180	—	—
Retired judges/beneficiaries	18 433 397	9 808 982	7 988 451
Total liability	**53 281 278**	**22 314 110**	**17 748 726**
Reduction in liability as compared with current scheme	**12 030 922**	**691 655**	**519 704**

[a] Includes new judges projected to be appointed over the next 30 years.

20. During its consideration of the Secretary-General's report, the Advisory Committee enquired as to whether increasing the retirement age for members of the Court and judges of the Tribunals from 60 to 65 years would lower the projected liability. In response, the Committee was informed that, over the past 20 years, no judges had retired before the age of 60 and only four judges had retired before the age of 65. Consequently, any actuarial savings associated with introducing early retirement deductions for individuals retiring before the age of 65 would be relatively small.

21. For the purposes of comparison, the Advisory Committee also requested information on the retirement benefits payable to various Secretariat and non-Secretariat officials, including Under-Secretaries-General, Assistant Secretaries-General, the Chair and Vice-Chair of the International Civil Service Commission (ICSC), the Chair of the Advisory Committee and members of the Joint Inspection Unit. The Committee was informed that all the aforementioned officials were participants in the United Nations Joint Staff Pension Fund, which had been designed to establish certain levels of replacement ratios for specific years of service for career employees in both the General Service and Professional categories. Pursuant to the Regulations and Rules of the Fund, participants contributed 7.9 per cent of their pensionable remuneration, while the Organization contributed 15.8 per cent.

22. Upon request, the Advisory Committee was provided with the following table, which gives an indication of the pension benefit amounts that the above-mentioned officials might expect to receive after nine years' contributory service:

Table 4
Benefit amounts for Secretariat and non-Secretariat officials after nine years' contributory service

Category of official	*Annual benefit amount (in United States dollars)*
Under-Secretary-General	42 880
Assistant Secretary-General	39 633
Chair/Vice-Chair of ICSC, Chair of the Advisory Committee	40 548
Member of the Joint Inspection Unit	35 202

The Committee was informed, upon enquiry, that if prospective new members of the Court were granted an accumulation rate similar to that of Under-Secretaries-General and Assistant Secretaries-General, namely 14.5 per cent after nine years' service, the projected benefit liability for new judges over the next 30 years would amount to $8,402,998, a reduction of $21,432,107 as compared with the projected liability of $29,835,105 under the current scheme.

23. With regard to the contributory nature of the pension scheme referred to in the preceding paragraph, the Advisory Committee recalls that, as indicated in paragraph 57 of the Secretary-General's report, the General Assembly has repeatedly affirmed that the conditions of service and compensation for non-Secretariat officials of the United Nations shall be separate and distinct from those for officials of the Secretariat. Furthermore, as indicated in paragraph 47 of the report, the non-contributory nature of the pension scheme for the members of the Court and the judges of the Tribunals is a principle of long standing, which was already firmly established at the time of the League of Nations and has consistently been reaffirmed by the Assembly.

24. The Advisory Committee was also provided, upon request, with the following information on the retirement benefits currently payable to the judges of the International Criminal Court:

		Early retirement			*Ancillary benefits*		
Benefit formula	*Normal retirement age*	*Age*	*Reduction*	*Participant contribution*	*Disability*	*Survivor*	*Children*
12.5 per cent of annual net base salary of $237,170, amounting to $29,645, prorated for terms of service of less than nine years. No additional pension benefits for service beyond a first nine-year term	60 (three years vested)	As at the time of separation	Actuarially reduced	No	Yes	Yes	Yes

The Committee was informed that the pension scheme for the judges of the International Criminal Court had been modified in 2007. Prior to that date, retirees had received an annual benefit equivalent to 50 per cent of their annual net base salary of $237,170, which amounted to $118,585. That amount was prorated to account for terms of office of less than nine years. The Committee was further informed that, in order to avoid any breach of the Statute of the Court, the Assembly

of States Parties had decided that the new pension scheme would apply only to new judges, with the previous scheme continuing to apply to serving judges and retirees.

Acquired pension benefit rights

25. The Advisory Committee recalls that, in paragraph 5 of its resolution 65/258, the General Assembly specifically requested the Secretary-General, when proposing a mechanism to determine retirement pension benefits for the members of the International Court of Justice and the judges of the two Tribunals, to take account of acquired pension benefit rights accrued prior to serving in the Court or the Tribunals. The Secretary-General addresses this issue in paragraphs 36 to 40 of his report, indicating, inter alia, that because of the variety in type and level of benefits provided by former employers and by social insurance programmes, achieving a uniform replacement ratio by adjusting accrual rates is difficult. He states that the actual replacement ratio for an individual judge will ultimately depend on the level of pension accrual during any prior employment periods and the applicable social insurance benefits, and asserts that a pension scheme that was designed to take into consideration the prior employment of the members of the Court might face legal and practical difficulties in its implementation.

26. Upon enquiry, the Advisory Committee was informed that those legal and practical difficulties related to privacy issues — it might not be appropriate to ask current members of the Court if and how they had invested their money in the past in order to build up prior pension rights, and it would be impossible to gather such information in respect of prospective judges — and to the challenges associated with obtaining information on benefits payable to individuals under their respective national pension schemes. The Committee was also informed that a pension scheme that took account of prior pension benefits accrued by members of the Court when determining their rights to a pension from the Court might be a complex matter requiring additional administration.

27. It was explained to the Advisory Committee, upon enquiry, that the current pension scheme for the members of the Court and the judges of the Tribunals incorporated such a rapid accumulation of benefits over the first nine years of service (5.56 per cent per year) because, to date, membership of the Court, and by extension of the Tribunals, had been treated as an autonomous and new career. Indeed, the Committee notes from paragraph 40 of the Secretary-General's report that, in 1995, it was the considered view of the then Secretary-General that the prior employment of the members of the Court should not be taken into consideration in establishing the level of income replacement for their pensions (see A/C.5/50/18, paras. 25-28 and annex).

28. The Advisory Committee was further informed, however, that in order to respond to the request of the General Assembly contained in its resolution 65/258, the defined-benefit pension scheme recommended by the Secretary-General — option A — did take into consideration the possibility that members of the Court and judges of the Tribunals had had previous careers and had acquired pension benefit rights. Accordingly, in paragraph 36 of the Secretary-General's report, it was suggested that pension benefits should be determined on the basis of the assumption that the members of the Court and the judges of the Tribunals had served a full 35-year career. In order to ensure an 80 per cent final salary replacement ratio target, an annual accrual rate of between 1.86 and 1.71 per cent would be required.

The Committee was informed that, under those circumstances, the current accrual rate for judges of 5.56 per cent during the first nine years might be deemed excessive. In paragraph 37 of his report, the Secretary-General also suggested that some accommodation in accrual rate could be envisaged to account for the loss in benefits that judges might experience by leaving prior employment before the highest career salary levels could be reflected in their pension benefits. In that case, according to the Secretary-General, an accrual rate of between 2.42 and 2.22 per cent would be appropriate in order to meet the overall targeted replacement ratio of 80 per cent for a 35-year career. It was pointed out to the Committee, in that connection, that the Secretary-General's recommended option was more generous than the mechanism set out in paragraphs 36 and 37 of his report, since it incorporated a linear accumulation rate of 3.7 per cent per year for 18 years.

V. Conclusion and recommendations

29. **Having considered the Secretary-General's report, as well as the additional information provided to it, the Advisory Committee recommends that the General Assembly endorse the Secretary-General's recommendation for a defined-benefit pension scheme — option A — with a linear system of accumulation of 3.7 per cent per year for 18 years and nothing thereafter. In the Committee's view, a change to the status quo is justified because option A does, to a certain extent, take account of acquired pension rights. The Committee also favours option A because it maintains the long-standing non-contributory nature of the pension scheme. Since, in accordance with Article 32, paragraph 5, of the Statute of the Court and articles 13 bis and 12 bis of the statutes of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively, the salaries, allowances and compensation of the members of the Court and the judges of the Tribunals may not be decreased during their term of office, the Committee agrees with the Secretary-General that the new arrangements should apply only to new members of the Court and judges of the Tribunals, if any.**

30. **As indicated in the preceding paragraph, the Secretary-General's recommended pension scheme does, to a certain extent, take account of acquired pension benefit rights accrued prior to service with the Court or the Tribunals when determining the level of retirement benefits. In the Advisory Committee's view, this approach is not unreasonable, particularly since the previous careers of the individuals concerned are a key factor in determining their competence to serve. The Committee considers that this question should have been addressed in more detail in the Secretary-General's report. The General Assembly may therefore wish to request the Secretary-General to give further consideration to this issue and to report back to it at its sixty-eighth session in the context of the next comprehensive review.**